

SEP 18 2003

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

DENNIS DUMAW,

Petitioner,

v.

U.S. DEPARTMENT OF LABOR,

Respondent.

No. 02-73020

OSHA No. 2001-ERA-6

MEMORANDUM*

On Petition for Review of an Order of the
Occupational Safety and Health Administration

Submitted September 9, 2003**
Seattle, Washington

Before: THOMPSON, HAWKINS, and BERZON, Circuit Judges.

The only question raised in this appeal is whether “extraordinary
circumstances” exist to warrant equitable tolling of 29 C.F.R. § 24.8, the

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Department of Labor's ten-business day limitation period to file a petition for review of an Administrative Law Judge's recommended decision. Because the facts are familiar to the parties, we recount them only as necessary to explain our decision.

"Extraordinary circumstances" is a very high standard that is only met where even the exercise of diligence would not have resulted in timely filing. *See, e.g., Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) ("complete psychiatric disability" during the entirety of the limitations period); *Alvarez-Machain v. United States*, 107 F.3d 696 (9th Cir. 1996) (incarceration in a foreign country for the entirety of the limitations period). "Extraordinary circumstances" does not extend to excusable neglect. *Irwin v. Dep't of Veteran Affairs*, 498 U.S. 89, 96 (1990).

While Mr. McGuigan's situation may amount to excusable neglect, it does not constitute "extraordinary circumstances." Nothing in the record suggests that McGuigan was incapable of performing legal work during the limitations period. He was coming into the office, made at least one court appearance, and completed several summary judgment motions during that time. We therefore find that extraordinary circumstances did not exist.

AFFIRMED.